

1 DAVID M. GOSSETT (D.C. Bar No. 468390)

2 [david.gossett@fcc.gov](mailto:david.gossett@fcc.gov)

3 Telephone: (202) 418-0980

4 Facsimile: (292) 418-2822

5 RICHARD K. WELCH (Va. Bar No. 28920)

6 [richard.welch@fcc.gov](mailto:richard.welch@fcc.gov)

7 Telephone: (202) 418-7225

8 Facsimile: (202) 418-2819

9 LAUREL R. BERGOLD (D.C. Bar No. 911339)

10 [laurel.bergold@fcc.gov](mailto:laurel.bergold@fcc.gov)

11 Telephone: (202) 418-1747

12 Facsimile: (202) 418-2819

13 FEDERAL COMMUNICATIONS COMMISSION

14 445 12th Street S.W.

15 Washington D.C. 20554

16 Attorneys for *Amicus Curiae*

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**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO COURTHOUSE**

23 MARK HEINRICHES, individually and on  
24 behalf of all others similarly situated,  
25 Plaintiff,

v.

26 WELL'S FARGO BANK, N.A. et al,

27 Defendant.

28 No. CV 13-05434 WHA  
Hon. William H. Alsup

**CLASS ACTION**

**STATUS REPORT**

29  
30 The Federal Communications Commission hereby responds to the Court's September 3,  
31 2014 request for a status update concerning two petitions pending before the agency involving an  
32 issue arising under the Telephone Consumer Protection Act ("TCPA"). Petition for Expedited  
33 Declaratory Ruling, filed by United Healthcare Services, Inc. (Jan. 16, 2014); Petition for  
34 Rulemaking of ACA International (Jan. 31, 2014). The Court noted that it "has been informed"

by the parties to the above-captioned case that these petitions are “potentially dispositive” of the issue in this case (Court Order at 1), *i.e.*, whether the “express consent” exception in 47 U.S.C. § 227(b)(1)(A) applies to autodialed or prerecorded calls to a wireless telephone number that has been reassigned to a new subscriber without the caller’s knowledge, when the previous subscriber (but not the new subscriber) had given the calling party consent to place calls to that telephone number.

The Commission has not in the past directly addressed the issue of consent as applied to calls made to reassigned wireless telephone numbers raised by the two petitions. The Commission has solicited comments on this subject from interested parties. Its staff has reviewed those comments and is formulating recommendations that will be presented to the FCC's commissioners for a vote. Although substantial progress has been made, in response to the Court's specific question, Commission counsel does not anticipate that the agency will issue a final decision on either of the pending petitions by the middle of October 2014. Nor is Commission counsel in a position to predict when the Commission will vote to approve a final order on this matter.

Respectfully submitted,

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David M. Gossett  
Acting Deputy General Counsel

Richard K. Welch  
Deputy Associate General Counsel

Laurel R. Bergold  
Counsel

Federal Communications Commission  
Washington, D.C. 20554  
(202) 418-1700

September 25, 2014